

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 10

IN THE MATTER OF:

)  
) U.S. EPA Region 10  
) CERCLA Docket No. 10-2013-0087

)  
) River Mile 11E Project Area within the  
) Portland Harbor Superfund Site  
) Portland, Multnomah County, Oregon  
)

)  
) Cargill, Inc., CBS Corporation, City of  
) Portland, DIL Trust, Glacier Northwest, Inc.,  
) and PacifiCorp  
)

~~Respondents.~~

) Respondents.  
)

)  
) -Proceeding Under Sections 104,  
) 107 and 122 of the Comprehensive  
) Environmental Response, Compensation  
) and Liability Act, 42 U.S.C. §§ 9604,  
) -9607 and 9622  
)  
)

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON

CONSENT FOR SUPPLEMENTAL RI/FS WORK AND REMEDIAL DESIGN

AMENDMENT NO. 1

**Introduction**

Cargill, Inc., CBS Corporation, the City of Portland, DIL Trust, Glacier Northwest, Inc., and PacifiCorp (Respondents) entered into an *Administrative Settlement Agreement and Order on Consent for Supplemental Remedial Investigation/Feasibility Study (RI/FS) Work*, U.S. EPA, Region 10, CERCLA Docket No. 10-2013-0087, with the United States Environmental Protection Agency (EPA) (the ASAOC) in ~~June~~-April 2013. Respondents are in the process of completing activities pursuant to the ASAOC and under EPA oversight in support of preliminary design activities for the River Mile 11 East (RM11E) Project Area within the boundaries of the Portland Harbor Superfund Site in Portland, Oregon (Site). Work performed by Respondents under the ASAOC is intended to supplement RI/FS work for the Site that was conducted separately by other parties pursuant to the *Administrative Settlement Agreement on Consent for Remedial Investigation and Feasibility Study*, CERCLA Docket No. 10-2001-0240, and to facilitate the selection and design of a final remedy for the RM11E Project Area.

This First Amendment to ~~that the~~ ASAOC (First Amendment) is for the purpose of including performance of remedial design under this Settlement Agreement. To effectuate the Respondents' agreement to expand the scope of work performed under this Settlement Agreement, the following terms and conditions of the Settlement Agreement are amended as provided below. All other terms and conditions of the Settlement Agreement remain in full force and effect. Any inconsistencies between the text of the original Settlement Agreement and this Amendment are unintentional and should be interpreted in such a manner to effectuate the parties' intent to perform all activities described in the Statement of Work, as supplemented herein, with EPA's oversight in coordination with the DEQ, the Trustees and Tribal Governments, and to reimburse the governments' response costs associated with such oversight consistent with the terms of the April 15, 2013 Settlement Agreement.

Paragraph 23 of the ASAOC expressly contemplated possible revisions to the Statement of Work under the ASAOC to include remedial design work for the RM11E Project Area that would be conducted after issuance of the Record of Decision for the Portland Harbor Superfund Site (ROD), but before the entry of a consent decree, to avoid delays in the performance of remedial design. EPA issued the ROD on January 6, 2017. Therefore, to avoid such delays, EPA and Respondents have now agreed to enter into this First Amendment to the existing ASAOC and to adopt the attached Remedial Design Statement of Work to design the final remedy at the RM11E Project Area.

~~EPA and Respondents may agree to amend the SOW as supplemented by this First Amendment to expand the Project Area for which remedial design will be performed. Within six months from the completion of the first site-wide baseline sampling event, if not earlier, EPA and Respondents will meet and confer regarding whether such an amendment to the SOW and expansion of the Project Area can be agreed upon.~~

**Commented [A1]:** The agreement to meet and confer to expand the areal footprint of the Project Area was discussed in our previous meeting.

**Commented [MW2]:** As documented in the attached technical memorandum, when all RI/FS data are considered, the current RM11 Project Area is still appropriate, subject to potential minor revisions, as needed, during the Remedial Design process. Accordingly, the meet and confer is not necessary and any changes required will be addressed as part of the BODR report, as provided in SOW.

EPA and Respondents agree to amend the ASAOC as follows:

1. This First Amendment, and the Remedial Design Statement of Work, which is attached as Appendix A-1 to this First Amendment, provide for the performance of post-ROD remedial design at the RM11E Project Area and are incorporated into and enforceable under the terms of the ASAOC as amended by this First Amendment.
2. References to Section 106, 42 U.S.C. §9606(a) shall be deleted from the caption and from Paragraphs 2 and 66 consistent with -EPA's Model ASAOC for Remedial Design.
3. The ~~following~~ definitions of "Settlement Agreement" and "Statement of Work," in Paragraph 12. p. and q. of Section III (Definitions) of the ASAOC, shall be amended and replaced with the following:

—“Settlement Agreement” shall mean the April 15, 2013 Administrative Settlement Agreement and Order on Consent, this Amendment No. 1, the original and modified Statement of Work, and all other appendices (listed in Section XXIX).

“Statement of Work” or “SOW” shall mean the statement of work for implementation of the response action as set forth in Appendix A to the original ASAO, and the Remedial Design Statement of Work attached to this First Amendment as Appendix A-1, and any modifications made thereto in accordance with the ASAO.

~~3.4~~ The following definitions shall be added to Section III (Definitions), as Paragraph 12 v. and w. of the ASAO:

v. “Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site, signed on January 3, 2017, by the Administrator of EPA, and all attachments thereto. A copy of the ROD can be found at <https://www3.epa.gov/region10/pdf/ph/sitewide/record-of-decision-jan2017.pdf>.

w. “Remedial Design” or “RD” shall mean those activities to be undertaken by Respondents to develop the final plans and specifications for remedial action as stated in the SOW.

~~4.5~~ The factual findings in Section IV (Findings of Fact) originally designated as Paragraph 13, subparagraphs h. and k. are replaced and amended with the following, and are now designated as subparagraphs h. and i through m. ~~and new factual findings are added as subparagraphs j. and l.~~

h. The final baseline ecological risk assessment (“BERA”) estimated risks to aquatic and aquatic-dependent species exposed to hazardous substances associated with the in-river portion of the Portland Harbor Site.

i. The BHHRA and BERA concluded that contamination within the Portland Harbor Site poses unacceptable risks to human health and the environment from numerous contaminants of potential concern in surface water, groundwater, sediment, and fish tissue. The final selected remedy identified 64 contaminants of concern (“COCs”) that contribute the most significant amount of risk to the human and ecological receptors. See ROD, Appendix II, Tables 1-5.

j. A subset of the COCs, called focused COCs, was developed in order to simplify analysis and evaluation of remedial alternatives for the Site. The focused COCs include PCBs, PAHs, dioxins and furans, and DDX.

k. The Selected Remedy in the ROD requires active remediation (dredging, capping and enhanced natural recovery) at areas exceeding the RALs for focused COCs (PCBs, PAHs, DDT, and dioxin/furans) and contaminated riverbanks adjacent to those areas. The Selected Remedy allows approximately 1,774 acres of sediment to recover naturally. The Selected Remedy is estimated to take 13 years to construct.

l. The ROD states that the actual technologies assigned to a specific area of the river will be dependent on a number of area-specific characteristics and environmental conditions to ensure that the final constructed remedy is appropriate for actual site-specific conditions. The ROD also identifies post-ROD / remedial design sampling activities that will support and refine the Site's conceptual site model (CSM) and be used for remedial design and construction as part of remedial action.

m. The River Mile 11E Project Area is within the Portland Harbor Superfund Site, which was listed on the National Priorities List (NPL) on December 1, 2000. 65 Fed. Reg. 75179-01 (December 1, 2000), and is finally described in the ROD.

~~5.6~~ Paragraph 14.f of Section V (Conclusions of Law) of the ASAO shall be amended and replaced by the following:

The response and RD actions required by this Settlement Agreement are necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be considered consistent with the NCP, as provided in Section 300.700(c)(3)(ii) of the NCP.

~~6.7~~ Paragraph 21 of Section VIII (Work to Be Performed) of the ASAO shall be amended and replaced by the following:

Respondents shall perform, at a minimum, all actions necessary to implement the Statement of Work (SOW), which is attached as Appendix A to the ASAO, and all actions necessary to implement the Remedial Design Statement of Work attached as Appendix A-1 to this First Amendment ("Remedial Design Work"), and comply with the accompanying schedules.

~~7.8~~ Paragraph 23 of Section VIII (Work to Be Performed) of the ASAO shall be amended and replaced by the following:

The response action goals for the ASAO are the further characterization, studies, and analysis, in support of preliminary design for the River Mile 11E Project Area, which are supplementary to the RI/FS for the Portland Harbor Superfund Site being conducted pursuant to the Administrative Settlement Agreement on Consent for Remedial Investigation and Feasibility Study (Docket No. CERCLA-10-2001-0240), and design of the remedial action at the River Mile 11E Project Area. Conducting this ASAO work will facilitate construction of the remedial action for the River Mile 11E Project Area.

EPA and Respondents have agreed to amend the ASAOC with this First Amendment to, among other things, adopt the accompanying Remedial Design Statement of Work. The response action goals for this First Amendment are to design the site-specific remedy that will be implemented within the RM11E Project Area in accordance with Section 14 of the ROD. The Remedial Design Work under this First Amendment will be incorporated into the post-ROD site file for the Site and will serve as the basis for remedial action within the RM11E Project Area. It is anticipated that final remedial action for the RM11E Project Area will be implemented under a separate consent decree following completion of all actions required under the ASAOC and this First Amendment.

~~8.9~~ Paragraph 24 of Section VIII (Work to Be Performed) of the ASAOC shall be amended and replaced by the following:

After review of any plan, report, or other item that is required to be submitted for approval pursuant to this Settlement Agreement and Appendix A to the ASAOC (SOW for Supplementary RI/FS Work), in a written notice to Respondents, EPA may: (a) approve, in whole or in part, the submission; (b) approve the submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that Respondents modify the submission; or (e) any combination of the above. If EPA requires revisions, Respondents shall submit a revised document within 30 days of receipt of EPA's notification of the required revisions. However, EPA shall not modify a submission itself without first providing Respondents at least one notice of deficiency and an opportunity to cure within 30 days, except where to do so would cause serious disruption to the Work or where previous submission(s) have been disapproved due to material defects. In the event that EPA modifies the submission to cure the deficiencies pursuant to this Section, EPA retains the right to seek stipulated penalties, as provided in Section XVIII. (Stipulated Penalties).

After submission of any deliverable required to be submitted for approval pursuant to this Settlement Agreement and Appendix A-1 to this First Amendment (Remedial Design Statement of Work), EPA and the Respondents will follow the procedures described in Section 5.5 (a) through (c) of Appendix A-1.

~~9. Paragraph 44(a) of Section XV (Payment of EPA, DEQ and Tribal Response Costs) of the ASAOC shall be amended and replaced by the following:~~

~~Respondents shall pay EPA 75% of EPA's Future Response Costs that are incurred from and after the effective date of this First Amendment and that are not inconsistent with the NCP. On a periodic basis, EPA will send Respondents' Project Coordinator a bill requiring payment that includes a certified Agency Financial Management System summary (SCORPIOS) cost summary report or other regionally prepared cost summary. The bill will include Future Response Costs as defined in this Settlement Agreement. Respondents shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 47 of this Settlement Agreement.~~

**Commented [A3]:** EPA acknowledges that the Group would like consideration for reduced oversight costs consistent with the recent Superfund Task Force recommendations. There has been no guidance or policies developed on that recommendation to date. EPA cannot agree to compromise costs actually incurred. EPA is amenable to discussing with the group ways EPA may be able to reduce its oversight work.

**Commented [MW4R3]:** RM11 Group would like to discuss ways for reducing or limiting oversight costs for RM11. We would also like to know if EPA's opposition to reducing the RM11 Group's responsibility for RD oversight costs is based on statute or policy, and basis for same.

~~EPA retains all rights to seek recovery of unreimbursed Future Response Costs from third parties not performing Remedial Design Work, and retains its right to seek recovery of unreimbursed Future Response Costs from Respondents in the event of any material non-compliance with the ASAO as evidenced by any final determination of Respondents' obligation to pay Stipulated Penalties under Section XVIII (Stipulated penalties).~~

10. Paragraph 58.(b). of Section XVIII. (Stipulated Penalties) shall be amended as follows:

The final and all submitted drafts of the following Compliance Milestones:

- i. The Basis ~~for of~~ Design Report
- ii. 30% Design Report
- iii. 60% Design Report
- iv. 100% Final Design Report

**Commented [MW5]:** If this is intended to replace the current list of deliverables in the AOC, then we should probably add the Recontamination Assessment Report to the list as it still needs to be submitted. Because EPA has agreed final version of Impementability Study is not required, it does not need to be added.

11. Subparagraph 74.c. of Section XXI. (Covenant Not To Sue By Respondents) is amended ~~as~~ and replaced by the following:

This Settlement Agreement shall not have any effect on claims or causes of action that Respondents have or may have pursuant to Sections 107(a) or 113(f) of CERCLA, 42 U.S.C. §§ 9607(a) or 9613(f), against the United States through or on behalf of various federal agencies, based upon a claim that the United States is a potentially responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the Work, and EPA Future Response Costs, and DEQ and Tribal Response Costs paid under Section XV. of this Settlement Agreement. However, the United States acknowledges the reservation of Section 107 claims without any concession that, even if such a claim exists, it is cognizable under Section 107.

11. [Reserved for determination of higher financial assurance amount]

**Commented [MW6]:** Existing FA amount (\$1.5m) is sufficient to carry forward for RD work, particularly given that respondents include a municipal entity. Higher FA amounts can be addressed at RA stage.

12. Paragraph 91 of Section XXVII. (Modifications) is ~~replaced and~~ amended and replaced by the as followsfollowing:

EPA may determine that in addition to tasks defined in the SOW, as supplemented by this First Amendment, or approved work plan or Basis of Design Report, other additional work within the River Mile 11E Project Area may be necessary to accomplish the goals of the response action as described in Paragraph 23. EPA may request Respondents in writing to perform these response actions and Respondents will notify EPA within 14 days of receipt of EPA's request whether they are willing to perform the additional work. Respondents may invoke dispute resolution in accordance with Section XVI. Subject to EPA resolution of any

dispute, Respondents shall implement the additional tasks which EPA determines are necessary. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

**Commented [MW7]:** RM11 Group would like to discuss EPA's proposed modifications clause, including edits marked at left, to ensure that appropriate constraints are in place and to avoid potential future disputes.

~~12.13.~~ Except as specifically provided in this First Amendment, all provisions of the ASAOC are unchanged and remain in full force and effect.

~~13.14.~~ This First Amendment shall be effective upon signature of this First Amendment by the [REDACTED], U.S. EPA Region 10.

It is so Ordered and Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

By: \_\_\_\_\_  
Cami Grandinetti  
Remedial Program Manager  
Office of Environmental Cleanup  
U.S. EPA, Region 10

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent Cargill, Inc.

By: \_\_\_\_\_  
\_\_\_\_\_  
*Printed Name*  
\_\_\_\_\_  
*Title*

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent CBS Corporation

By: \_\_\_\_\_  
\_\_\_\_\_  
*Printed Name*  
\_\_\_\_\_  
*Title*

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent City of Portland

By: \_\_\_\_\_  
\_\_\_\_\_  
*Printed Name*  
\_\_\_\_\_  
*Title*

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent DIL Trust

By: \_\_\_\_\_  
\_\_\_\_\_  
*Printed Name*  
\_\_\_\_\_  
*Title*



Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent Glacier Northwest, Inc.

By: \_\_\_\_\_

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*

Agreed this \_\_\_\_\_ day of \_\_\_\_\_, 2017.  
For Respondent PacifiCorp

By: \_\_\_\_\_

\_\_\_\_\_  
*Printed Name*

\_\_\_\_\_  
*Title*